

AMENDED IN SENATE APRIL 15, 2004

SENATE BILL

No. 1477

Introduced by Senator Sher

February 19, 2004

An act to ~~amend Sections 13050 and 13260 of, to add Section 13275 to, and to add Chapter 18 (commencing with Section 14150) to Division 7 of, the Water Code, relating to water, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1477, as amended, Sher. Water quality.

~~Under~~

~~(1) Under existing law, the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional water quality control boards are the principal agencies that regulate water quality. The act requires certain persons who discharge waste to submit a waste discharge report to the appropriate regional board. The act makes a person who fails to file a waste discharge report, when requested to do so, guilty of a misdemeanor. The act defines "beneficial uses" for the purposes of water quality regulation.~~

This bill would require the state board and the Department of Fish and Game to develop a memorandum of understanding to facilitate consultation among the state board, the regional boards, and the Department of Fish and Game with regard to the issuance of a waste discharge permit for a discharge that may require the issuance of an incidental take permit or the execution of a streambed alteration agreement under state law. The bill would require the state board to develop a process to facilitate consultation among the state board, the regional boards, and the National Marine Fisheries Service or the

United States Fish and Wildlife Service with regard to the issuance of a waste discharge permit for a discharge that may require the issuance of an incidental take statement or an incidental take permit under federal law. a person proposing to undertake a project that creates, or threatens to create, adverse impacts to wetlands to submit a waste discharge report to the appropriate regional board. By subjecting additional discharges to waste discharge reporting requirements, the bill would impose a state-mandated local program by expanding the scope of a crime. The bill would define “beneficial uses” to specifically include floodwater retention, pollutant removal, and habitat connectivity. The bill would require the state board or a regional board to undertake certain consultations prior to issuing a waste discharge permit that may result in the taking of a threatened or endangered species. The bill would require the state board to develop a process to facilitate consultation among various state and federal agencies regarding the issuance of a waste discharge permit for a discharge that may require the issuance of certain “incidental take permits” or “incidental take statements.”

The bill would require the state board to formulate and adopt a program to protect and restore isolated *waters*, nonnavigable waters, wetlands, *riparian areas*, and *special aquatic sites* that includes the adoption of requirements to implement the state policy of no net loss of state wetlands *intermittent, ephemeral, and perennial streams in accordance with certain requirements*. The bill would authorize the state board, under certain circumstances, to issue *general permits* a *general permit* for a discharge that could affect the quality of isolated *waters*, nonnavigable waters, wetlands, or *special aquatic sites* *riparian areas, or intermittent, ephemeral, or perennial streams*.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason. Existing law continuously appropriates money in the Fish and Game Preservation Fund to the department to pay all necessary expenses incurred in carrying out programs and policies contained in the Fish and Game Code and to pay the compensation and expenses of the department, and employees of the department.

By expanding the parameters of, and imposing new duties on, the department, this bill would make an appropriation.

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: yes.
State-mandated local program: ~~yes~~ no.

The people of the State of California do enact as follows:

1 SECTION 1. ~~Section 13050 of the Water Code is amended to~~
2 ~~read:~~
3 ~~13050. — As used in this division:~~
4 ~~(a) “State board” means the State Water Resources Control~~
5 ~~Board.~~
6 ~~(b) “Regional board” means any California regional water~~
7 ~~quality control board for a region as specified in Section 13200.~~
8 ~~(c) “Person” includes any city, county, district, the state, and~~
9 ~~the United States, to the extent authorized by federal law.~~
10 ~~(d) “Waste” includes sewage and any and all other waste~~
11 ~~substances, liquid, solid, gaseous, or radioactive, associated with~~
12 ~~human habitation, or of human or animal origin, or from any~~
13 ~~producing, manufacturing, or processing operation, including~~
14 ~~waste placed within containers of whatever nature prior to, and for~~
15 ~~purposes of, disposal.~~
16 ~~(e) “Waters of the state” means any surface water or~~
17 ~~groundwater, including saline waters, within the boundaries of the~~
18 ~~state.~~
19 ~~(f) “Beneficial uses” of the waters of the state that may be~~
20 ~~protected against quality degradation include, but are not limited~~
21 ~~to, domestic, municipal, agricultural and industrial supply; power~~
22 ~~generation; recreation; aesthetic enjoyment; navigation;~~
23 ~~floodwater retention; pollutant removal; habitat connectivity; and~~
24 ~~preservation and enhancement of fish, wildlife, and other aquatic~~
25 ~~resources or preserves.~~
26 ~~(g) “Quality of the water” refers to chemical, physical,~~
27 ~~biological, bacteriological, radiological, and other properties and~~
28 ~~characteristics of water which affect its use.~~
29 ~~(h) “Water quality objectives” means the limits or levels of~~
30 ~~water quality constituents or characteristics which are established~~
31 ~~for the reasonable protection of beneficial uses of water or the~~
32 ~~prevention of nuisance within a specific area.~~
33 ~~(i) “Water quality control” means the regulation of any~~
34 ~~activity or factor which may affect the quality of the waters of the~~

- 1 ~~state and includes the prevention and correction of water pollution~~
2 ~~and nuisance.~~
- 3 ~~(j) “Water quality control plan” consists of a designation or~~
4 ~~establishment for the waters within a specified area of all of the~~
5 ~~following:~~
- 6 ~~(1) Beneficial uses to be protected.~~
7 ~~(2) Water quality objectives.~~
8 ~~(3) A program of implementation needed for achieving water~~
9 ~~quality objectives.~~
- 10 ~~(k) “Contamination” means an impairment of the quality of~~
11 ~~the waters of the state by waste to a degree which creates a hazard~~
12 ~~to the public health through poisoning or through the spread of~~
13 ~~disease. “Contamination” includes any equivalent effect resulting~~
14 ~~from the disposal of waste, whether or not waters of the state are~~
15 ~~affected.~~
- 16 ~~(l) (1) “Pollution” means an alteration of the quality of the~~
17 ~~waters of the state by waste to a degree which unreasonably affects~~
18 ~~either of the following:~~
- 19 ~~(A) The waters for beneficial uses.~~
20 ~~(B) Facilities which serve these beneficial uses.~~
- 21 ~~(2) “Pollution” may include “contamination.”~~
- 22 ~~(m) “Nuisance” means anything which meets all of the~~
23 ~~following requirements:~~
- 24 ~~(1) Is injurious to health, or is indecent or offensive to the~~
25 ~~senses, or an obstruction to the free use of property, so as to~~
26 ~~interfere with the comfortable enjoyment of life or property.~~
- 27 ~~(2) Affects at the same time an entire community or~~
28 ~~neighborhood, or any considerable number of persons, although~~
29 ~~the extent of the annoyance or damage inflicted upon individuals~~
30 ~~may be unequal.~~
- 31 ~~(3) Occurs during, or as a result of, the treatment or disposal of~~
32 ~~wastes.~~
- 33 ~~(n) “Recycled water” means water which, as a result of~~
34 ~~treatment of waste, is suitable for a direct beneficial use or a~~
35 ~~controlled use that would not otherwise occur and is therefor~~
36 ~~considered a valuable resource.~~
- 37 ~~(o) “Citizen or domiciliary” of the state includes a foreign~~
38 ~~corporation having substantial business contacts in the state or~~
39 ~~which is subject to service of process in this state.~~
- 40 ~~(p) (1) “Hazardous substance” means either of the following:~~

1 ~~(A) For discharge to surface waters, any substance determined~~
2 ~~to be a hazardous substance pursuant to Section 311(b)(2) of the~~
3 ~~Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).~~

4 ~~(B) For discharge to groundwater, any substance listed as a~~
5 ~~hazardous waste or hazardous material pursuant to Section 25140~~
6 ~~of the Health and Safety Code, without regard to whether the~~
7 ~~substance is intended to be used, reused, or discarded, except that~~
8 ~~“hazardous substance” does not include any substance excluded~~
9 ~~from Section 311(b)(2) of the Federal Water Pollution Control Act~~
10 ~~because it is within the scope of Section 311(a)(1) of that act.~~

11 ~~(2) “Hazardous substance” does not include any of the~~
12 ~~following:~~

13 ~~(A) Nontoxic, nonflammable, and noncorrosive stormwater~~
14 ~~runoff drained from underground vaults, chambers, or manholes~~
15 ~~into gutters or storm sewers.~~

16 ~~(B) Any pesticide which is applied for agricultural purposes or~~
17 ~~is applied in accordance with a cooperative agreement authorized~~
18 ~~by Section 116180 of the Health and Safety Code, and is not~~
19 ~~discharged accidentally or for purposes of disposal, the application~~
20 ~~of which is in compliance with all applicable state and federal laws~~
21 ~~and regulations.~~

22 ~~(C) Any discharge to surface water of a quantity less than a~~
23 ~~reportable quantity as determined by regulations issued pursuant~~
24 ~~to Section 311(b)(4) of the Federal Water Pollution Control Act.~~

25 ~~(D) Any discharge to land which results, or probably will~~
26 ~~result, in a discharge to groundwater if the amount of the discharge~~
27 ~~to land is less than a reportable quantity, as determined by~~
28 ~~regulations adopted pursuant to Section 13271, for substances~~
29 ~~listed as hazardous pursuant to Section 25140 of the Health and~~
30 ~~Safety Code. No discharge shall be deemed a discharge of a~~
31 ~~reportable quantity until regulations set a reportable quantity for~~
32 ~~the substance discharged.~~

33 ~~(q) (1) “Mining waste” means all solid, semisolid, and liquid~~
34 ~~waste materials from the extraction, beneficiation, and processing~~
35 ~~of ores and minerals. Mining waste includes, but is not limited to,~~
36 ~~soil, waste rock, and overburden, as defined in Section 2732 of the~~
37 ~~Public Resources Code, and tailings, slag, and other processed~~
38 ~~waste materials, including cementitious materials that are~~
39 ~~managed at the cement manufacturing facility where the materials~~
40 ~~were generated.~~

~~(2) For the purposes of this subdivision, “cementitious material” means cement, cement kiln dust, clinker, and clinker dust.~~

~~(r) “Master recycling permit” means a permit issued to a supplier or a distributor, or both, of recycled water, that includes waste discharge requirements prescribed pursuant to Section 13263 and water recycling requirements prescribed pursuant to Section 13523.1.~~

~~SEC. 2. Section 13260 of the Water Code is amended to read:~~

~~13260. (a) All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:~~

~~(1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.~~

~~(2) Any person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.~~

~~(3) Any person operating, or proposing to construct, an injection well.~~

~~(4) Any person proposing to undertake a project that creates, or threatens to create, adverse impacts to wetlands, including a project to clear vegetation, drain the wetlands, or change hydrology.~~

~~(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.~~

~~(c) Every person subject to subdivision (a) shall file with the appropriate regional board a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.~~

~~(d) (1) (A) Each person who is subject to subdivision (a) or (c) shall submit an annual fee according to a fee schedule established by the state board.~~

~~(B) The total amount of annual fees collected pursuant to this section shall equal that amount necessary to recover costs incurred in connection with the issuance, administration, reviewing, monitoring, and enforcement of waste discharge requirements and waivers of waste discharge requirements.~~

1 ~~(C) Recoverable costs may include, but are not limited to, costs~~
2 ~~incurred in reviewing waste discharge reports, prescribing terms~~
3 ~~of waste discharge requirements and monitoring requirements,~~
4 ~~enforcing and evaluating compliance with waste discharge~~
5 ~~requirements and waiver requirements, conducting surface water~~
6 ~~and groundwater monitoring and modeling, analyzing laboratory~~
7 ~~samples, and reviewing documents prepared for the purpose of~~
8 ~~regulating the discharge of waste, and administrative costs~~
9 ~~incurred in connection with carrying out these actions.~~

10 ~~(D) In establishing the amount of a fee that may be imposed on~~
11 ~~any confined animal feeding and holding operation pursuant to~~
12 ~~this section, including, but not limited to, any dairy farm, the state~~
13 ~~board shall consider all of the following factors:~~

- 14 ~~(i) The size of the operation.~~
15 ~~(ii) Whether the operation has been issued a permit to operate~~
16 ~~pursuant to Section 1342 of Title 33 of the United States Code.~~
17 ~~(iii) Any applicable waste discharge requirement or~~
18 ~~conditional waiver of a waste discharge requirement.~~
19 ~~(iv) The type and amount of discharge from the operation.~~
20 ~~(v) The pricing mechanism of the commodity produced.~~
21 ~~(vi) Any compliance costs borne by the operation pursuant to~~
22 ~~state and federal water quality regulations.~~
23 ~~(vii) Whether the operation participates in a quality assurance~~
24 ~~program certified by a regional water quality control board, the~~
25 ~~state board, or a federal water quality control agency.~~

26 ~~(2) (A) Subject to subparagraph (B), any fees collected~~
27 ~~pursuant to this section shall be deposited in the Waste Discharge~~
28 ~~Permit Fund, which is hereby created. The money in the fund is~~
29 ~~available for expenditure by the state board, upon appropriation by~~
30 ~~the Legislature, solely for the purposes of carrying out this~~
31 ~~division.~~

32 ~~(B) (i) Notwithstanding subparagraph (A), the fees collected~~
33 ~~pursuant to this section from stormwater dischargers that are~~
34 ~~subject to a general industrial or construction stormwater permit~~
35 ~~under the national pollutant discharge elimination system~~
36 ~~(NPDES) shall be separately accounted for in the Waste Discharge~~
37 ~~Permit Fund.~~

38 ~~(ii) Not less than 50 percent of the money in the Waste~~
39 ~~Discharge Permit Fund that is separately accounted for pursuant~~
40 ~~to clause (i) is available, upon appropriation by the Legislature, for~~

1 expenditure by the regional board with jurisdiction over the
2 permitted industry or construction site that generated the fee to
3 carry out stormwater programs in the region.

4 (iii) Each regional board that receives money pursuant to
5 clause (ii) shall spend not less than 50 percent of that money solely
6 on stormwater inspection and regulatory compliance issues
7 associated with industrial and construction stormwater programs.

8 (3) Any person who would be required to pay the annual fee
9 prescribed by paragraph (1) for waste discharge requirements
10 applicable to discharges of solid waste, as defined in Section
11 40191 of the Public Resources Code, at a waste management unit
12 that is also regulated under Division 30 (commencing with Section
13 40000) of the Public Resources Code, shall be entitled to a waiver
14 of the annual fee for the discharge of solid waste at the waste
15 management unit imposed by paragraph (1) upon verification by
16 the state board of payment of the fee imposed by Section 48000 of
17 the Public Resources Code, and provided that the fee established
18 pursuant to Section 48000 of the Public Resources Code generates
19 revenues sufficient to fund the programs specified in Section
20 48004 of the Public Resources Code and the amount appropriated
21 by the Legislature for those purposes is not reduced.

22 (e) Each person discharges waste in a manner regulated by this
23 section shall pay an annual fee to the state board. The state board
24 shall establish, by regulation, a timetable for the payment of the
25 annual fee. If the state board or a regional board determines that
26 the discharge will not affect, or have the potential to affect, the
27 quality of the waters of the state, all or part of the annual fee shall
28 be refunded.

29 (f) (1) The state board shall adopt, by emergency regulations,
30 a schedule of fees authorized under subdivision (d). The total
31 revenue collected each year through annual fees shall be set at an
32 amount equal to the revenue levels set forth in the Budget Act for
33 this activity. The state board shall automatically adjust the annual
34 fees each fiscal year to conform with the revenue levels set forth
35 in the Budget Act for this activity. If the state board determines that
36 the revenue collected during the preceding year was greater than,
37 or less than, the revenue levels set forth in the Budget Act, the state
38 board may further adjust the annual fees to compensate for the over
39 and under collection of revenue.

~~(2) The emergency regulations adopted pursuant to this subdivision, any amendment thereto, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the state board.~~

~~(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall determine the adequacy of a report of waste discharge submitted under this section.~~

~~(h) Each report submitted under this section shall be sworn to, or submitted under penalty of perjury.~~

~~(i) The regulations adopted by the state board pursuant to subdivision (f) shall include a provision that annual fees shall not be imposed on those who pay fees under the national pollutant discharge elimination system until the time when those fees are again due, at which time the fees shall become due on an annual basis.~~

~~(j) Any person operating or proposing to construct an oil, gas, or geothermal injection well subject to paragraph (3) of subdivision (a), shall not be required to pay a fee pursuant to subdivision (d), if the injection well is regulated by the Division of Oil and Gas of the Department of Conservation, in lieu of the appropriate California regional water quality control board, pursuant to the memorandum of understanding, entered into between the state board and the Department of Conservation on May 19, 1988. This subdivision shall remain operative until the memorandum of understanding is revoked by the state board or the Department of Conservation.~~

1 ~~(k) In addition to the report required by subdivision (a), before~~
2 ~~any person discharges mining waste, the person shall first submit~~
3 ~~both of the following to the regional board:~~

4 ~~(1) A report on the physical and chemical characteristics of the~~
5 ~~waste that could affect its potential to cause pollution or~~
6 ~~contamination. The report shall include the results of all tests~~
7 ~~required by regulations adopted by the board, any test adopted by~~
8 ~~the Department of Toxic Substances Control pursuant to Section~~
9 ~~25141 of the Health and Safety Code for extractable, persistent,~~
10 ~~and bioaccumulative toxic substances in a waste or other material,~~
11 ~~and any other tests that the state board or regional board may~~
12 ~~require, including, but not limited to, tests needed to determine the~~
13 ~~acid-generating potential of the mining waste or the extent to~~
14 ~~which hazardous substances may persist in the waste after~~
15 ~~disposal.~~

16 ~~(2) A report that evaluates the potential of the discharge of the~~
17 ~~mining waste to produce, over the long term, acid mine drainage,~~
18 ~~the discharge or leaching of heavy metals, or the release of other~~
19 ~~hazardous substances.~~

20 ~~(l) Except upon the written request of the regional board, a~~
21 ~~report of waste discharge need not be filed pursuant to subdivision~~
22 ~~(a) or (c) by a user of recycled water that is being supplied by a~~
23 ~~supplier or distributor of recycled water for whom a master~~
24 ~~recycling permit has been issued pursuant to Section 13523.1.~~

25 ~~SEC. 3. Section 13275 is added to the Water Code, to read:~~

26 ~~13275. (a) Prior to issuing a waste discharge permit pursuant~~
27 ~~to this division for a discharge that may result in the taking of a~~
28 ~~state threatened or endangered species, the state board or the~~
29 ~~regional board shall consult with the Department of Fish and Game~~
30 ~~to ensure that the permit will be issued consistent with Article 3~~
31 ~~(commencing with Section 2080) of Chapter 1.5 of Division 3 of~~
32 ~~the Fish and Game Code.~~

33 ~~(b) Prior to issuing a waste discharge permit pursuant to this~~
34 ~~division for a discharge that may result in the taking of a federal~~
35 ~~threatened or endangered species, the state board or the regional~~
36 ~~board shall consult with the National Marine Fisheries Service or~~
37 ~~United States Fish and Wildlife Service in a manner that is~~
38 ~~consistent with Sections 1536 and 1539 of Title 16 of the United~~
39 ~~States Code.~~

~~(c) (1) The state board shall develop a process to facilitate consultation among the state board, the regional boards, and the Department of Fish and Game with regard to the issuance of waste discharge permits pursuant to this division for a discharge that may require the issuance of incidental take permits under Article 3 (commencing with Section 2080) of Chapter 1.5 of Division 3 of the Fish and Game Code.~~

~~(2) The state board shall develop a process to facilitate consultation among the state board, the regional boards, and the National Marine Fisheries Service or United States Fish and Wildlife Service with regard to the issuance of waste discharge permits pursuant to this division for a discharge that may require the issuance of incidental take statements under Section 1536 of Title 16 of the United States Code or incidental take permits under Section 1539 of Title 16 of the United States Code.~~

~~SEC. 4.—~~

SECTION 1. Section 13275 is added to the Water Code, to read:

13275. (a) In order to promote efficiency and enhance the protection of natural resources, the state board and the Department of Fish and Game shall develop a memorandum of understanding to facilitate consultation among the state board, the regional boards, and the Department of Fish and Game with regard to the issuance of a waste discharge permit pursuant to this division for a discharge that may require the issuance of an incidental take permit under Article 3 (commencing with Section 2080) of Chapter 1.5 of Division 3 of the Fish and Game Code or the execution of a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.

(b) The state board shall develop a process to facilitate consultation, to the maximum extent feasible, among the state board, the regional boards, and the National Marine Fisheries Service or United States Fish and Wildlife Service with regard to the issuance of a waste discharge permit pursuant to this division for a discharge that may require the issuance of an incidental take statement under Section 1536 of Title 16 of the United States Code or an incidental take permit under Section 1539 of Title 16 of the United States Code.

1 SEC. 2. Chapter 18 (commencing with Section 14150) is
2 added to Division 7 of the Water Code, to read:

3
4 CHAPTER 18. THE WATER QUALITY PROTECTION ACT OF 2005

5
6 Article 1. General Provisions

7
8 14150. The Legislature finds and declares all of the
9 following:

10 (a) The health, safety, and welfare of the people of the State of
11 California depend upon the protection of all the waters of the state,
12 both navigable and nonnavigable.

13 (b) Isolated *waters*, nonnavigable waters, wetlands, *riparian*
14 *areas*, and intermittent ~~and ephemeral~~, *ephemeral*, and *perennial*
15 streams provide a variety of important functions that benefit the
16 state economically and biologically. These benefits include all of
17 the following:

18 (1) Protecting subsurface water resources and providing
19 valuable watersheds and recharging groundwater supplies.

20 (2) Flood and stormwater control by the hydrologic absorption
21 and storage capacity of wetlands.

22 (3) Reducing pollutant loadings in waters of the state by
23 serving as pollutant sinks and biological and chemical oxidation
24 basins.

25 (4) Protecting wildlife habitat by providing breeding, nesting,
26 feeding grounds, and cover for many forms of commercial and
27 noncommercial fish and wildlife, including migratory waterfowl,
28 and rare, threatened, or endangered wildlife species.

29 (5) Erosion control by serving as a sedimentation area and
30 filtering basin, by absorbing silt and organic matter.

31 (6) Providing sources of nutrients in water food cycles and
32 nursery grounds and sanctuaries for fish.

33 (7) Providing recreational areas for hunters, fisherman,
34 bird-watchers, and others.

35 (c) The loss of isolated *waters*, nonnavigable waters, wetlands,
36 *riparian areas*, and intermittent ~~and ephemeral~~, *ephemeral*, and
37 *perennial* streams has caused significant economic impairment to
38 the state, including losses due to flooding, costs associated with
39 new flood control projects, increased water treatment costs, loss

1 of water supplies, loss of commercial fisheries, and loss of public
2 recreation revenue.

3 (d) Water is transported through interconnected hydrologic
4 cycles, above and below ground, and pollution, impairment, or
5 destruction of any part of an aquatic system may affect the
6 chemical, biological, and physical integrity of other parts of the
7 aquatic system.

8 (e) California's climate and hydrologic regimes range from
9 coastal rain forest to inland desert with most locations receiving
10 highly seasonal and variable precipitation. These environmental
11 conditions result in a large inventory of swales, vernal lakes,
12 vernal pools, desert seeps and springs, dry lake beds, ephemeral
13 and intermittent headwater streams, and enclosed basins not
14 draining to navigable waters.

15 (f) California has lost nearly 91 percent of its original wetlands.

16 (g) Since 1977, the United States Army Corps of Engineers has
17 been charged with the regulation of discharges into waters of the
18 United States pursuant to Section 404 of the Clean Water Act (33
19 U.S.C. Sec. 1344).

20 (h) *In 1993, Governor Pete Wilson issued an executive order*
21 *that the state shall work to ensure there is no net loss of wetlands*
22 *and a long term net gain in the quantity, quality, and permanence*
23 *of wetlands acreage and values in California.*

24 (i) The United States Supreme Court has ruled that the United
25 States Army Corps of Engineers does not have jurisdiction under
26 the Clean Water Act to regulate isolated, nonnavigable waters
27 where the sole basis is the use of the waters as habitat for migratory
28 birds.

29 ~~(i)~~

30 (j) On January 15, 2003, the United States Environmental
31 Protection Agency and United States Army Corps of Engineers
32 issued a joint memorandum that eliminates Clean Water Act
33 jurisdiction over isolated, nonnavigable waters in a variety of
34 settings, creating significant uncertainty as to how much of
35 California's unique waterways are currently subject to the Clean
36 Water Act.

37 ~~(j)~~

38 (k) The Clean Water Act explicitly allows states to adopt more
39 protective standards and permitting programs than those set forth
40 in that act.

~~(k)~~—

(l) *On January 25, 2001, the State Water Resources Control Board issued a legal memorandum, explaining that the Porter-Cologne Water Quality Control Act grants to the state board the authority to regulate the discharge of dredged or fill materials into all waters of the state, whether or not the United States Army Corps of Engineers determines that it has jurisdiction in the matter.*

(m) *The state has a responsibility to protect the waters of the state, including isolated waters, nonnavigable waters, wetlands, riparian areas, and intermittent, ephemeral, and perennial streams, from the discharge of all forms of waste, including dredged or fill material, that could affect the quality of waters of the state.*

(n) The program established by this chapter shall be undertaken by the state board and the regional boards.

14151. It is the intent of the Legislature to do all of the following:

(a) Protect the public health and welfare by preventing degradation to California's drinking water sources, including isolated waters, nonnavigable waters, wetlands, riparian areas, and intermittent ~~and ephemeral~~, ephemeral, and perennial streams.

(b) Maintain the pollution control benefits provided by isolated, nonnavigable waters, including the removal of pollutants and excess nutrients, reduction of erosion and sedimentation, and wastewater treatment.

(c) Prevent adverse impacts to California's unique ecosystems, commercial and noncommercial fisheries and wildlife habitat, and state or federally protected species.

(d) Provide habitat connectivity for fish and wildlife species in order to prevent fish and wildlife populations from becoming isolated and to allow natural dispersal of fish and wildlife populations.

~~(e) Provide natural and enhanced flood control by protecting isolated, nonnavigable, wetlands, and intermittent and ephemeral streams.~~

~~(f) Create a state water quality control program that provides the same or greater level of protection as that accorded to isolated, nonnavigable waters under Sections 401 and 404 of the Clean~~

~~Water Act (33 U.S.C. Secs. 1341 and 1344), and the act's implementing regulations that were in effect on December 31, 2000.~~

~~(g) Enact a state water quality control program that provides for no net loss of state wetlands.~~

~~14152. — As used in this chapter, the following words have the following meanings:~~

~~(a) “Special aquatic sites” means those geographic areas, large or small, that, in the judgment of the state board, possess special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values, that significantly influence, or positively contribute to, the general overall environmental health of vitality of the entire ecosystem of a region. For the purposes of this chapter, special aquatic sites include sanctuaries, refuges, mudflats, vegetated shallows, reefs, riffle and pool complexes, and intermittent and ephemeral streams.~~

~~(e) Provide natural and enhanced flood control by protecting isolated waters, nonnavigable waters, wetlands, riparian areas, and intermittent, ephemeral, and perennial streams.~~

~~(f) Support the use of managed wetland habitat, which is administered primarily for the benefit of waterfowl and other wetlands-dependent species.~~

~~(g) Create a state water quality control program for isolated waters, nonnavigable waters, wetlands, riparian areas, and intermittent, ephemeral, and perennial streams that provides the same or greater level of protection as that accorded to waters of the United States under Sections 401 and 404 of the Clean Water Act (33 U.S.C. Secs. 1341 and 1344), and the act's implementing regulations that were in effect on December 31, 2000.~~

~~(h) Enact a state water quality control program that provides for no net loss of state wetlands and riparian areas and achieves a long-term net gain in the quantity, quality, and performance of wetlands and riparian acreage and values in California.~~

~~14152. As used in this chapter, the following words have the following meanings:~~

~~(a) “Riparian area” means those areas transitional between terrestrial and aquatic ecosystems that are distinguished by gradients in biophysical conditions, ecological processes, and biota. A riparian area is an area through which surface and~~

1 *subsurface hydrology connect water bodies with their adjacent*
2 *uplands. A riparian area includes those portions of terrestrial*
3 *ecosystems that significantly influence exchanges of energy and*
4 *matter with aquatic ecosystems. A riparian area is adjacent to*
5 *intermittent, ephemeral, or perennial streams, lakes, or*
6 *estuarine-marine shorelines.*

7 (b) “Wetlands” means those areas that are inundated or
8 saturated by surface water or groundwater at a frequency and
9 duration sufficient to support, and that under normal
10 circumstances do support, a prevalence of vegetation typically
11 adapted for life in saturated soil conditions. For the purposes of
12 this chapter, wetlands include swamps, marshes, bogs, vernal
13 pools, and similar areas.

14
15 Article 2. The Isolated, Nonnavigable Waters, Wetlands, and
16 Special Aquatic Sites Protection Program
17

18 ~~14153. (a) The state board shall formulate and adopt a~~
19 ~~program to protect and restore isolated, nonnavigable waters,~~
20 ~~wetlands, and special aquatic sites. This program shall provide for~~
21 ~~both of the following:~~

22 ~~(1) The adoption of requirements that afford the same or~~
23 ~~greater level of protection as that provided to isolated,~~
24 ~~nonnavigable waters, wetlands, and special aquatic sites under~~
25 ~~Sections 401 and 404 of the Clean Water Act (33 U.S.C. Secs. 1341~~
26 ~~and 1344) and the act’s implementing regulations, as set forth in~~
27 ~~33 C.F.R. Part 328 and 40 C.F.R. Part 230, that were in effect on~~
28 ~~December 31, 2000.~~

29 ~~(2) The adoption of requirements to implement the state policy~~
30 ~~of no net loss of state wetlands.~~

31 *14153. (a) The state board shall formulate and adopt a*
32 *program to protect and restore isolated waters, nonnavigable*
33 *waters, wetlands, riparian areas, and intermittent, ephemeral, and*
34 *perennial streams. This program shall include, at a minimum,*
35 *provisions pursuant to Article 4 (commencing with Section 13260)*
36 *of Chapter 4 that provide for all of the following:*

37 *(1) The adoption of requirements that afford the same or*
38 *greater level of protection for these waters as that provided to*
39 *waters of the United States under Sections 401 and 404 of the*
40 *Clean Water Act (33 U.S.C. Secs. 1341 and 1344) and the act’s*

implementing regulations, as set forth in Part 328 of Title 33 of the Code of Federal Regulations and Part 230 of Title 40 of the Code of Federal Regulations, that were in effect on December 31, 2000.

(2) The adoption of beneficial use categories to recognize the basin-wide values of isolated waters, nonnavigable waters, wetlands, riparian areas, and intermittent, ephemeral, and perennial streams, including, but not limited to, floodwater retention pollutant removal and habitat connectivity.

(3) The adoption of requirements that provide for no net loss of, and a long-term net gain in, the quantity, quality, permanence of wetlands and riparian acreage and values in California, and the achievement of, to the greatest extent practicable, protection for intermittent, ephemeral, and perennial streams.

(b) The state board and the regional boards shall be responsible for implementing this program consistent with their responsibilities under this division.

14154. The state board ~~shall require~~ and the regional boards ~~to shall~~ conduct public outreach to advise project proponents of their responsibilities under Article 4 (commencing with Section 13260) of Chapter 4 relating to project impacts on isolated waters, nonnavigable waters, wetlands, and special aquatic sites.

~~14155. (a) For a discharge that could affect the quality of isolated, nonnavigable waters, wetlands, or special aquatic sites, the state board may issue one or more general permits if the state board determines that the discharges covered under these general permits will have only a minimal adverse effect on the quality of those waters, either separately or cumulatively.~~

~~(b) For the purposes of carrying out subdivision (a), the state board shall issue a general permit in accordance with the requirements adopted pursuant to subdivision (a) of Section 14153.~~

~~(c) The duration of a general permit may not exceed five years after the date of its issuance.~~

SEC. 5.—No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

1 ~~the meaning of Section 6 of Article XIII B of the California~~
2 ~~Constitution.~~ waters, wetlands, riparian areas, and intermittent,
3 ephemeral, and perennial streams.

4 14155. (a) For a discharge that could affect the quality of
5 isolated waters, nonnavigable waters, wetlands, riparian areas, or
6 intermittent, ephemeral, or perennial streams, the state board may
7 issue a general permit in accordance with the requirements
8 adopted pursuant to subdivision (a) of Section 14153 and pursuant
9 to subdivision (i) of Section 13263.

10 (b) The duration of a general permit may not exceed five years
11 after the date of its issuance, but may be renewed by the state board
12 if the state board finds that the permit continues to be consistent
13 with requirements adopted pursuant to subdivision (a) of Section
14 14153.

